IN THE

Supreme Court of the United States

FEBRUARY TERM, 1942.

No. 936

EDWARD L. CORBETT,

Petitioner,

vs

LILLIAN J. HALLIWELL,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT AND BRIEF IN SUPPORT THEREOF.

EDWARD L. CORBETT,
Appellant,
by ARTHUR B. O'KEEFE, *his Attorney,*
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PETITION FOR WRIT OF CERTIORARI.

MAY IT PLEASE THE COURT:

The petition of Edward L. Corbett respectfully shows to this Honorable Court:

Summary Statement of the Matter Involved.

1. Whether in an action at law for the value of professional services rendered by the plaintiff to the defendant, it is a proper or correct construction by the United States Circuit Court of Appeals for the Second Circuit to hold that plaintiff was not justified in understanding that the defendant intended to compensate him, or that she availed herself of his services with knowledge that he expected compensation, and that accordingly, judgment must be given for the defendant, when another Circuit Court, to wit, the Circuit Court for the District of Oregon, has held in a like case that it is not material that defendant,

in his own mind, has no intention to compensate plaintiff even though this fact is known to plaintiff, provided he does not acquiesce in such an intention by sufficient word or deed.

2. Whether it is a proper or correct construction by the United States Circuit Court of Appeals for the Second Circuit to hold that where the findings are not "clearly erroneous" but are supported by substantial evidence, the judgment based thereon for the defendant must be affirmed even though the findings referred to do not support the judgment rendered but point to a conclusion that plaintiff should have prevailed.

3. Whether it is a proper or correct construction by the said Circuit Court of Appeals to hold that the appeal raises only the question of the sufficiency of the evidence to support the findings and when the appeal is based on the fact that regardless of whether the evidence may or may not support the findings, the findings do not support the judgment.

4. Whether it is a proper or correct construction by the said Circuit Court of Appeals to hold that a contract of compensation will not be implied where the conduct of the parties was not such as to justify the plaintiff in understanding that the defendant intended to compensate him or that she availed herself of his services with knowledge that he expected compensation, where the true test should be, was the conduct of the parties such that a *reasonable* person in the offeree's position would be justified in inferring a promise, and the further rule that even though the plaintiff knew that the defendant had a private intention and reservation not to compensate him for the services, he may still recover as long as by his own conduct he did nothing to justify defendant in this intention.

5. Whether it is a proper or correct construction by the Court below to hold that "in actions tried upon the facts without a jury, findings of fact made by the Court shall not be set aside unless clearly erroneous" where the bulk of the evidence consists of written documents from which the Appellate Court upon examination may draw its own conclusions.

Reasons Relied on for the Allowance of the Writ.

1. The construction of the Circuit Court of Appeals that the judgment for the defendant must be affirmed since the findings are not "clearly erroneous" but are supported by substantial evidence is a far departure from the the accepted and usual course of judicial proceedings where it is apparent on the face of the findings, that they do not support the judgment of the lower Court.

2. The construction of the Court below based the test of whether there was or was not an implied contract, upon the personal intentions of the parties involved. This appears to be in conflict with the weight of authority that holds that the true test is, whether or not the conduct of the parties is such that a reasonable person would be justified in inferring a promise and furthermore, a secret reservation in defendant's mind not to compensate plaintiff, is not binding on the latter, providing he, by his own conduct, does not contribute to such an intent on the part of the defendant.

3. The decision of the Circuit Court of Appeals in holding in its first opinion that the findings of the trial court are "not unsupported by any substantial evidence", and in its second opinion, that the findings are not "clearly erroneous", unnecessarily restricts the scope of review on appeal when the findings, to a large extent, are, and

may be based on written documents and evidence from which the Appellate Court may, and should, draw its own conclusions.

WEREFORE, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Second Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 22, Edward L. Corbett, Appellant, v. Lillian J. Halliwell, Appellee, and that the said decree or judgment of the said United States Circuit Court of Appeals for the Second Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

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